(6)

Supreme Court, U.S.
FILED
SEP 19 1996
CLERK

No. 95-1929

In The

Supreme Court of the United States

October Term, 1995

MARY McCABE, as Administratrix of the Estate of Ruchla "Rose" Zinger,

Petitioner,

vs.

THE CITY OF LYNN,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITIONER'S REPLY BRIEF

CHARLES M. CAMPO, JR.
Counsel of Record
FLOYD H. ANDERSON, JR.
STEVEN M. BLOOM
KASSLER & FEUER, P.C.
Attorneys for Petitioner
101 Arch Street
Boston, Massachusetts 02110-1103
(617) 439-3800

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

5 pp

PETITIONER'S REPLY BRIEF

The Constitutional Protection from Warrantless Home Entry is not Limited to Criminal Proceedings; The Undisputed Evidence Shows No Emergency Justifying Forcible Warrantless Entry.

The longstanding precedents of this Court mandate that, in the absence of exigent circumstances, a warrant be obtained prior to the forcible entry of a home by government agents.[1] The City in its Brief in Opposition to Petition for Writ of Certiorari has disregarded the unique protection afforded the home under the Constitution, and has based its opposition exclusively upon precedents involving warrantless searches far less intrusive than the forcible entry of the home. The need for granting certiorari is compelling because this case squarely presents the issue of whether this Court will preserve the firm line drawn in *Payton v. New York*, 445 U.S. 573 (1980), by requiring a warrant as a condition to non-exigent entry of a home in civil commitment proceedings.

The City implicitly acknowledges that the decision of the First Circuit is in direct contravention of *Payton*, which unequivocally holds that "the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances that threshold may not be reasonably crossed without a warrant." *Id.* at 590. The City's

---

[1] The sole exception to the requirement of obtaining a warrant prior to forced entry of a home is found in *Griffin v. Wisconsin*, 483 U.S. 868 (1987) wherein this Court upheld the validity of a warrantless search of a home conducted pursuant to State regulations specifically authorizing probation officers to search the homes of criminal probationers without first securing a warrant.

first line of response to this clear language, though couched as a criticism of Petitioner's arguments based on *Payton*, is in effect a criticism of this Court's holding in *Payton* as a "mechanical application[] of the Fourth Amendment." (Respondent's Brief at 11.)

In addition, the City contends that *Payton* and *Camara v. Municipal Court*, 387 U.S. 523 (1967), which both mandate a warrant as a prerequisite to valid entry of a residence under the Fourth Amendment, should be limited exclusively to searches occurring in a criminal context. (Respondent's Brief at 11-12.) In *Camara* the Court expressly rejected the argument advanced by the City here: "It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara*, 387 U.S. at 530. The notion that the protection of the Fourth Amendment is somehow limited in a civil context was recently unanimously rejected by this Court in *Soldal v. Cook County, Ill.*, 506 U.S. 56 (1992). "[T]he right against unreasonable seizures would be no less transgressed if the seizure of the house was undertaken to collect evidence, verify compliance with a housing regulation, effect an eviction by the police, or on a whim, for no reason at all." *Id.* at 69. Further, this Court has previously applied the warrant requirement to invalidate warrantless entry to private property in a variety of non-criminal contexts.[2]

---

[2] See, e.g., *Welsh v. Wisconsin*, 466 U.S. 740 (1984) (illegal warrantless entry to effectuate arrest of a civil offender); *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978) (illegal warrantless entry to investigate compliance with OSHA regulations); *G.M.*

Finally, the City has attempted to characterize the factual situation at issue as an "emergency" equivalent to exigent circumstances as a basis for warrantless entry within the reasoning of *Mincey v. Arizona*, 437 U.S. 385 (1978). (Respondent's Brief at 20-21.) This argument simply ignores the undisputed evidence, as found by both the District Court and the First Circuit, that the police officers here acted at their leisure, pursuant to a City policy which permitted forced entry to homes in the absence of exigent circumstances. See, e.g., the District Court's opinion at A-55a:

> Based upon Constable Jackson's prior attempts to serve the eviction process the officers had no indication that waiting a few hours would present an immediate threat to either Ms. Zinger or the community. Moreover, since the officers already had information that Ms. Zinger would not let them into her home, they could have presented that information and the involuntary commitment order to a magistrate *prior* to their attempt to serve the order at 1:00 p.m. Instead, the officers (following City policy) chose to break into Zinger's home to serve the civil commitment order. Therefore, no emergency situation existed which would justify the officers' entry into Ms. Zinger's home without a warrant.

In its opinion the First Circuit expressly acknowledged the inapplicability of exigent circumstances or emergency as a basis for the warrantless search, by referring to "the

---

Leasing Corp. v. United States, 429 U.S. 338 (1976) (illegal warrantless entry of a business premises by IRS agent to execute a civil levy order).

undisputed evidence that the police officers waited several hours before executing the pink paper, thus demonstrating little concern that Ms. Zinger might exhibit the sort of sudden onset of 'dangerousness' alluded to in the assessment made by Dr. Barden." (First Circuit's opinion at A-20-21a.) Because of this undisputed evidence, the First Circuit rejected reliance on a theory of "emergency" or exigent circumstances as a basis for justifying the warrantless entry to Mrs. Zinger's home. That same undisputed evidence warrants that this Court reject the City's attempt to resurrect the "emergency" theory as a basis for denying certiorari.

CONCLUSION

For all the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: September 18, 1996

Respectfully submitted,

CHARLES M. CAMPO, JR.
Counsel of Record
FLOYD H. ANDERSON, JR.
STEVEN M. BLOOM
KASSLER & FEUER, P.C.
Attorneys for Petitioner
101 Arch Street
Boston, MA 02110-1103
Tel: (617) 439-3800